

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 651 of 1988

For Approval and Signature:

Sd/-

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 yes, 2 to 5 No.
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STATE OF GUJARAT

Versus

SURESHBHAI LALJIBHAI VASAVA

Appearance:

MR.M.A.BUKHARI,ADDL.PUBLIC PROSECUTOR for Petitioner  
MR RA MISHRA for Respondent.

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/06/96

ORAL JUDGEMENT

This acquittal appeal is directed against the judgment and order of acquittal dated April 27,1988 passed by the learned Judicial Magistrate, Nadiad.By the impugned order, the learned Magistrate acquitted the respondent-accused for the offence under section 409 of

the Indian Penal Code.

P.W.1, Ajitrai Mukundrai Mankad, P.W.1, lodged the complaint Exh.17 to the effect that the respondent had absconded on May 3, 1984 with the Government amount of Rs.50,000/-. It is not in dispute that the respondent was working as Treasurer in the Head Post Office at Nadiad on the said date, i.e. on May 3, 1984. It was also stated in the complaint that a messenger was sent at the residence of the respondent on 4th and 5th of May, 1984, but the premises of the respondent was found to be locked. A complaint was, therefore, lodged, being C.R.No.120/94 with Nadiad Town Police Station for the offence under section 409 of the Indian Penal Code against the respondent.

By charge Exh.5, it was alleged that the respondent was the main Treasurer in the General Post Office at Nadiad on or about May 3, 1984, having dominion over the cash amount of the said Post Office. It is further alleged that on 3rd May, 1984 when another Officer was posted as Treasurer vice him, he did not give the charge of the Government cash amount of Rs.50,000/- and thereby committed criminal breach of trust in respect of the said sum and thereby committed offence under section 409 of the Indian Penal Code.

The respondent pleaded not guilty to the said charge.

The learned Magistrate, having recorded evidence of the prosecution witnesses and on appreciation thereof, ordered to acquit the respondent-accused for the offence with which he was charged.

Mr.M.A. Bukhari, learned Addl. Public Prosecutor appearing for the appellant-State has taken me through the relevant evidence and other materials on record and submitted that the impugned order of acquittal is improper and cannot be sustained, having regard to evidence on record. On considering the relevant evidence on record, it is proved beyond reasonable doubt that the respondent-accused was a public servant on the date of the offence. It is also proved that he had control or dominion over the Government property in capacity of a Treasurer in General Post Office in Nadiad. However, it is not conclusively proved that he had committed criminal

breach of trust or misappropriated the said sum of Rs.50,000/-.

P.W.1, Ajitrai Mukundrai Mankad, who was the Post Master in 1984 at General Post Office in Nadiad, deposed at Exh.16 that he had visited the office of the Treasurer where the respondent was working. He verified the cash amount on hand between 5.30 p.m. and 6.15 p.m. The respondent had to hand over his charge as a Treasurer to one Shri P.B. Prajapati and the same was so handed over at about 7.00 p.m. on that day. It was found that Rs.50,000/- were less in the cash amount of the said charge. It appears that some statements of the respondent were recorded. The learned Magistrate has recorded that all these statements are not fully given by the respondent-accused. In the statement Exh.19, Mr.Prajapati has admitted about the cash balance as received from the Treasury Office; however, it would not make the accused liable unless it is proved beyond reasonable doubt that the respondent being entrusted with the said sum or having dominion over the said cash amount, in his capacity as Treasurer, committed criminal breach of trust in respect of the said sum and/or misappropriated it for his own use. It transpires from the evidence that on 3.5.1984 the respondent could not produce the written vouchers and he had promised that he would hand over such vouchers to Mr.Prajapati. In one of the statements, it is recorded that the respondent would furnish the amount of Rs.50,000/-, if the same is missing from the Treasury. In one of the statements, he is said to have furnished a cheque for the said sum. The learned Magistrate has recorded that the P.W.1, Mr.Mankad, the then Post Master of Nadiad, had visited the Treasury Office at about 5.30 p.m. or 6.15 p.m. on 3.5.1984 when the respondent had to relinquish his charge as a Treasurer. He has admitted that having counted the cash amount, he had admitted the said sum as per Exh.16. However, it is disclosed in the complaint that the accused had absconded from the afternoon on that day. In fact, it is in the evidence of Mr.Prajapati that he had taken charge from the accused at about 7.15 p.m. on that day. The respondent was, therefore, present. At about 5.30 p.m., the Head Post Master told Mr.Prajapati that there was some error in the account and Rs.50,000/- was found to be less. When Mr.Prajapati knew about it, he instructed the respondent not to proceed on leave and accordingly the respondent had remained present. The Post Master General of Nadiad Post Office had visited the Treasury Office and had verified the cash amount. There are, therefore, material contradictions in the evidence

of Mr.Prajapati and the Head Post Master, .If there is misappropriation or mistake on the account it is at the stage when the respondent had already relinquished the charge as the Treasurer. The learned Magistrate having considered all these circumstances and evidence, as stated in para 7 of his judgment, concluded that the guilt of the accused could not be established beyond reasonable doubt. Considering the evidence on record and the material adduced before the Court, two views could be possible. It is settled position that when two views are possible, the view in favour of the accused has to be adopted in the acquittal appeal. The principles governing appeal against acquittal are clear and that the High Court will only interfere if it is proved, without any doubt, that the accused is guilty and that he has been acquitted on unreasonable grounds. Mr.Bukhari, th learned Addl. Public Prosecutor, appearing for the State, has not been able to point out any such infirmity in the impugned order of acquittal. The impugned decision is passed after weighing the facts and evidence of the case. It is, therefore, not proper to disturb the order and finding of acquittal recorded by the learned Magistrate.

In the result, the appeal is dismissed.

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